



July 13, 1999

Mr. Juan Cruz
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR99-1941

Dear Mr. Cruz:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125959.

The San Antonio Independent School District (the "school district"), which you represent, received a request for "[d]ocumentation in the proposed termination of Jenny Saldivar, teacher at Poe Middle School." In response to the request, you submit to this office for review the information which you assert is responsive.¹ You contend that the submitted records are excepted from required public disclosure by sections 552.101 and 552.102 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

First, you contend that documents relating to Ms. Saldivar's appraisals, submitted as Exhibit B, are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You have submitted several "appraisal system" evaluation forms which you claim are confidential teacher evaluations.

Section 21.355 of the Education Code provides, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a

¹You have also submitted to this office information, such as copies of Open Records Decisions and case law, that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

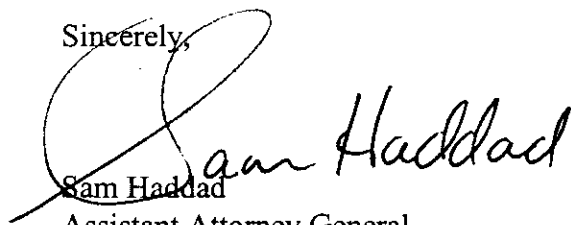
certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the submitted evaluations are confidential under section 21.355 of the Education Code.

Next, you assert that the documents submitted as Exhibit C, consisting of memorandum, recommendations and notes, are excepted from disclosure by sections 552.101 and 552.102. In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Specifically, section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

In *Industrial Foundation*, the supreme court stated that information is deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685; Open Records Decision No. 142 at 4 (1976) (construing statutory predecessor to Gov't Code § 552.101). We do not believe that the documents within Exhibit C are protected by a right of privacy. Open Records Decision Nos. 470 (1987), 455 (1987) (public employee's job performance is not generally protected by right of privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). After reviewing the submitted materials, we do not believe that Exhibit C is protected by a common-law right to privacy; therefore, the documents must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 125959

Encl.: Submitted documents

cc: Ms. Jeanne Russell
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(w/o enclosures)